

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MIKE SHALES, JOHN BRYAN Sr., AL)	
OROSZ, DAN BREJC, TOBY KOTH and)	
VERN BAUMAN as Trustees of THE)	
FOX VALLEY LABORERS' HEALTH AND)	
WELFARE FUND,)	
)	
and)	
)	Case No. 07 C 6837
MIKE SHALES, JOHN BRYAN Sr., AL)	
OROSZ, TOBY KOTH, GORDON)	
ANDERSON and DAN BREJC as Trustees of)	
THE FOX VALLEY LABORERS' PENSION)	
FUND,)	
)	Judge Zagel
Plaintiffs,)	
)	Magistrate Judge Denlow
v.)	
)	
BARTLETT SEWER & WATER, INC,)	
)	
Defendant.)	

PLAINTIFFS' MOTION FOR JUDGMENT BY DEFAULT

Plaintiffs MIKE SHALES, JOHN BRYAN, Sr., AL OROSZ, DAN BREJC, TOBY KOTH and VERN BAUMAN as Trustees of THE FOX VALLEY LABORERS' HEALTH and WELFARE FUND ("Welfare Fund") and MIKE SHALES, JOHN BRYAN Sr., AL OROSZ, TOBY KOTH, GORDON ANDERSON and DAN BREJC as Trustees of THE FOX VALLEY LABORERS' PENSION FUND ("Pension Fund") (collectively, "the Funds"), through their attorneys Dowd, Bloch & Bennett, respectfully move this court for a default judgment, in the form of the attached proposed order against the Defendant BARTLETT SEWER & WATER,

INC. (hereinafter the “Defendant Company”). In support of this motion, the Plaintiffs state as follows:

1. This is a claim against the Defendant Company for delinquent reports and contributions due to employee fringe benefit funds under Section 515 of ERISA, 29 U.S.C. §1145 and delinquent union dues and industry fund contributions enforceable under Section 301 of the Labor-Management Relations Act, 29 U.S.C. §185.

2. The Funds filed its Complaint on December 4, 2007, seeking the following relief: (1) that the Defendant Company be found liable to the Funds and Affiliated Organizations for the delinquent contributions and dues owed to date, interest, liquidated damages, audit costs and attorneys’ fees and costs; (2) that the Defendant Company be ordered to pay to Plaintiffs all accrued delinquencies after the filing of this suit, interest and liquidated damages; (3) that the Defendant Company be ordered to remit reports Funds and the District Council for all unreported months and to pay the amounts revealed to be due pursuant to those reports including contributions and dues as well as interest and liquidated damages for each untimely remittance; (4) that the Defendant Company be ordered to pay to the Funds all court costs and reasonable attorneys’ fees incurred for filing this suit; and (5) for such other legal and equitable relief as the Court deems just and proper.

3. The Defendant Company was served with a copy of the Complaint and Summons on January 2, 2008 and its Answer was due on January 22, 2008. As the Defendant Company’s registered agent could not be found with reasonable diligence at the registered office of record of Illinois, service on the Defendant Company was effectuated by filing BCA-5.25 with the Secretary of State on January 2, 2008. The return of service was filed with the Clerk of the Court on January 8, 2008.

4. As the Defendant failed to file an appearance or Answer or otherwise plead to the Complaint, an Order of Default was entered against it on February 14, 2008.

5. The Construction & General Laborers' District Council of Chicago & Vicinity (hereinafter the "District Council") and the Defendant Company are now and at all relevant times have been parties to successive collective bargaining agreements that obligate the Defendant Company to make monthly contributions to the Funds on behalf of its employees covered by the Agreement for health and welfare, pension benefits and for deductions and contributions for the Affiliated Organizations. The Agreement also requires the Company to submit monthly remittance reports.

6. Under the Funds' respective Trust Agreements, once a lawsuit is filed, an Employer's delinquency incurs liquidated damages in the amount of 20% of the delinquent contributions owed and ERISA requires awarding such liquidated damages. 29 U.S.C. §1132(g)(2)(C)(ii).

7. Under the Agreement, an Employer's delinquency in dues and ancillary contributions incurs liquidated damages in the amount of 10% of the delinquent contributions owed.

8. Notwithstanding its obligations under the collective bargaining agreements, as revealed pursuant to an audit for the period of January 1, 2005 through July 31, 2007, the Defendant Company has failed to timely report and pay contributions and dues owed to the Funds and the Affiliated Organizations, thereby depriving the Funds and the Affiliated Organizations of contributions, income and information needed to administer the Funds, and jeopardizing the welfare and pension benefits of participants and beneficiaries. A copy of the audit is attached as Exhibit "A."

9. Based on the audit, for the period of January 1, 2005 through July 31, 2007, the Defendant Company owes the following amounts for unpaid contributions, dues, liquidated damages, interest, and audit costs but not attorneys' fees and costs which the Defendant Company is also liable to pay:

Pension (01/05-7/07)	\$ 3,221.63
Safety	\$ 6.04
Training	\$ 126.27
Welfare	\$ 4,928.40
CAICA	\$ 11.10
CISCO	\$ 6.04
IAF	\$ 36.24
Dues	\$ 397.99
LDCLMCC	\$ 90.09
LECET	<u>\$ 37.54</u>
Subtotal:	\$ 8,861.34
Liquidated Damages @ 20%	\$ 1,664.74
Liquidated Damages @ 10%	\$ 53.76
Interest	\$ 4,027.12
Audit Fee	<u>\$ 913.54</u>
Total	\$15,520.50

See Exhibit "B" Affidavit of Patricia Shales

10. Since at least January 1, 2005, the Defendant Company has employed employees who performed work covered by the Agreement.

11. Despite demand duly made, the Defendant Company has not remitted the required contributions.

12. All conditions precedent to requiring payment of contributions to the Funds have been met.

13. The Defendant Company's failure to make contributions and to the Funds and the Affiliated Organizations violates ERISA Section 515, 29 U.S.C. §1145, and LMRA Section 301, 29 U.S.C. §185.

14. Under ERISA Section 502(g)(2), 29 U.S.C. §1132(g)(2), the terms of the Agreement, and the Funds' and Affiliated Organizations' governing trust documents, the Defendant Company is liable to the Funds for unpaid contributions, dues, interest, liquidated damages, audit costs and reasonable attorneys' fees and court costs.

15. The Defendant Company is also obligated by the terms of the Agreement, to pay the attorneys' fees and costs incurred by the Funds for its efforts to collect these amounts from the Defendant Company.

16. Based on the amount of work that Plaintiffs' counsel has completed to date and the work Plaintiffs' counsel anticipates doing in the future to bring this matter to conclusion, Plaintiffs have incurred or will incur attorneys' fees and costs in the amount of \$3,856.17. See Exhibit "C" Affidavit of LaKisha M. Kinsey-Sallis.

17. Accordingly, for the period of January 1, 2005 through July 31, 2007, the Plaintiffs are entitled to recover from the Defendant Company the total amount of **\$19,376.67** for all delinquent amounts and reasonable fees and costs, which is based on the following:

Pension (01/05-7/07)	\$ 3,221.63
Safety	\$ 6.04
Training	\$ 126.27
Welfare	\$ 4,928.40
CAICA	\$ 11.10
CISCO	\$ 6.04
IAF	\$ 36.24
Dues	\$ 397.99
LDCLMCC	\$ 90.09
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Subtotal:	\$ 8,861.34
Liquidated Damages @ 20%	\$ 1,664.74
Liquidated Damages @ 10%	\$ 53.76
Interest	\$ 4,027.12
Audit Fee	\$ 913.54
Attorneys' Fees & Costs	<u>\$ 3,856.17</u>
Total	\$19,376.67

WHEREFORE, the reasons stated above, the Plaintiffs respectfully requests that this Court enter a judgment by default against the Defendant BARTLETT SEWER & WATER, INC., in the form of the attached Order, in the amount of **\$19,376.67**.

Respectfully Submitted,

/s/ LaKisha M. Kinsey-Sallis
LaKisha M. Kinsey-Sallis
One of Plaintiffs' Attorneys

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